

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 2253 of 1989

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the Judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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RATHVA KHAJURIYA NOORJI  
VERSUS  
BAI BHANGDIBEN SENGLABHAI

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Appearance:

MR JM PATEL for the Petitioner  
MR SHALIN MEHTA for MR GIRISH PATEL for  
Respondent No.1  
MR VM PANCHOLI for Resondents No.2 and 3

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CORAM : MR JUSTICE S.K. KESHOTE  
Date of Decision : 16/06/2000

C.A.V. JUDGMENT

1. The petitioner by this petition under Article

227 of the Constitution is praying for quashing and setting aside the order dated 24th November, 1988 of the respondent No.3 as well as the order dated 17th March, 1988 of the Collector, Vadodara, the respondent No.2. The respondent No.3 under the order impugned in this special civil application in revision confirmed the order of the Collector, Vadodara dated 17th March, 1988. Under the order dated 17th March, 1988, the Collector, Vadodara held that the sale deed of the land in dispute in favour of the petitioner made by the respondent No.1 is made in contravention of provision of section 73 A of the Bombay Land Revenue Code. This order has been confirmed, as stated earlier, in revision application filed by the petitioner under section 211 of the Code by the State Government.

2. The facts of the case, in brief, are that on 31st December, 1969 the petitioner purchased the land bearing Survey No. 82 admeasuring 1 acre and 25 gunthas for Rs.400/- from the respondent No.1. The petitioner and the respondent No.1 both are adivasis (scheduled tribe). It is the case of the petitioner that the petitioner was also put in possession of the land in dispute and since then he is cultivating the same till date. The proceedings under section 9 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 were initiated against the petitioner in the year 1984 and the Deputy Collector under its order dated 25th September, 1984 was pleased to declare the transaction to be invalid. That order was challenged by the petitioner by filing the revision application before the State Government and that came to be decided under the order dated 21st May, 1987. The matter was remanded back to the Deputy Collector to hold the inquiry under section 73-A of the Bombay Land Revenue Code. Thereafter, the Collector issued the show cause notice under section 73-A of the Bombay Land Revenue Code to the petitioner to show cause as to why the said transfer should not be declared to be invalid under the aforesaid provision. The Collector, under the order dated 17th March, 1988 held this transaction to be in breach of section 73-A of the Bombay Land Revenue Code which order came to be confirmed by the State Government. Hence, this special civil application.

3. Learned counsel for the petitioner firstly contended that the respondent No.3 has acted as if it is the High Court. Instead of calling the record and proceedings of the Collector, Vadodara and admitting the matter, meaning thereby, the revision application was dismissed at the admission stage. In the submission of

the learned counsel for the petitioner, this was inherent lack of jurisdiction on the part of the respondent No.3 as under section 211 of the Bombay Land Revenue Code, there is no provision to fix the matter for preliminary hearing for admission and to decide the matter without calling for the record and proceedings of the authority below. Second contention raised is that the transaction between the parties is dated 31st December, 1969, and in view of the provisions of section 73-AA and subsection 3(b) thereof of the Bombay Land Revenue Code, this transaction is saved and this aspect has not been considered by the revisional authority. Thirdly, it is contended that in the proceedings under section 211 of the Bombay Land Revenue Code, the respondent No.3 has no power to decide the question for the alleged breach of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 as it is beyond the jurisdiction of authority. Reference in this respect has been made to the decision of this court reported in 1980 (1) GLH 155. It is submitted that though this point has not been raised before the authority below but it being a pure question of law and no further investigation is required to be made on the facts by the court, the same may be allowed to be raised by the petitioner. Lastly, it is contended that the transaction is of the year 1969 while the proceedings have been initiated in the year 1984 and on this ground of inordinate delay in initiation of proceedings, the same deserves to be quashed and set aside.

4. On the other hand, Shri Shalin Mehta learned counsel for the respondent No.1 vehemently contended that the petitioner cannot be permitted to raise the point which has not been raised before the revisional authority. In his submission, even in the earlier revision application, the petitioner has not taken this point. Carrying this contention further, it is submitted that in the earlier revision application, the respondent No.3 held that there is a breach of provisions of section 7 of the Fragmentation Act and in view of the provisions of section 9, this transaction deserves to be cancelled but the order has been set aside only on the ground that to hold the enquiry under section 73-A of the Land Revenue Code. That has been done, as what Shri Shalin Mehta contends that the petitioner pleaded oral sale. It has next been contended that under section 211 of the Land Revenue Code the respondent No.3 has power of revision and there is no any prohibition under the Act or Rules framed thereunder that the revision application cannot be put

for preliminary hearing. The record and proceedings of the authority below is not required to be called for if the revisional authority is prima-facie satisfied that the case is not worth for admission. Lastly, it is contended that the suit land in a notified fragment and as such there is no question of sale of the same without prior permission of the competent authority.

5. The counsel for the respondents No.2 and 3 supported the orders of the authorities below.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. From perusal of the order of the Collector dated 17th March, 1988, I find that the said authority has taken it to be a case of breach of provisions of section 73-A of the Bombay Land Revenue Code. The Collector has further held that the petitioner has failed to prove that the land has been purchased by him. A finding of fact has been recorded that the petitioner by coercion has taken the possession of the suit land from the respondents.

8. The revisional authority has confirmed the judgment. It is further held that the land bearing Survey No.82 has been notified as a fragment and otherwise also, without the prior permission of the Collector, the same cannot be transferred. This alleged transfer of the land is against the provisions of section 7 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. It is also held by both the authorities that the petitioner has no land adjoining to the land in dispute. It is further held as a fact that no document of the sale has been executed. On the basis of a map produced on the record a finding of fact has been recorded that the land bearing Survey No. 85 is not adjoining to the land bearing Survey No.82. In these facts, both the authorities have held that taking of the possession by the petitioner by coercion is illegal and this illegality cannot be allowed to be perpetuated. In the earlier proceedings, it is held that the suit land is a fragment but this sale transaction which is alleged to be oral and as such the matter has been remanded to consider the same with reference to this provision. In those proceedings, the petitioner has come up with a case that there was an oral sale. In this special civil application, the petitioner produced a document as annexure 'A' which is purported to be a sale deed but it is not registered. I fail to see when earlier in the proceedings it was a

case of the petitioner that it was an oral sale how this document has now come into existence. In this case, the petitioner stated that both the petitioner and the respondent No.1 are tribal but I find from the earlier proceedings that the petitioner was taken to be a nontribal. The oral sale was rightly not accepted for the reason that it was not entered in the record of rights prior to 25th May, 1966. In the earlier proceedings, this oral sale deed was stated to be of prior to 20 years i.e. prior to 1966 and that has not been entered into record of rights. Now in this special civil application a document has been produced to show that this sale deed was of the year 1969, which is difficult to accept. Possibly it may be a case of preparation of a forged document. I do not find any reference of this document is made by the petitioner before the lower authorities. If we go by the judgment of the Collector, I find that it has also proceeded on the ground that the sale was oral and that too of prior to 1966. The petitioner has not produced any proof of the fact that he is a tribal. In the facts of this case, it is a clear case where the petitioner by coercion has taken the possession of the land of tribal and rightly both the authorities have not given any relief to him. Moreover, the land is a notified fragment also. The contention raised by the learned counsel for the petitioner that section 73-AA and subsection 3(b) thereof helps him is difficult to accept. When there is no sale, I fail to see how this provision is relevant in this case. It was a case of oral sale prior to 1966 which was not registered and it cannot be taken to be a case of sale deed. The documents of the year 1969 cannot be taken into consideration. The revenue authorities have rightly proceeded in the matter and acted to enforce the law for the person for whose protection the same has been enacted. The possession of the land of the tribal taken by a nontribal by coercion is rightly declared to be illegal and the petitioner has rightly not been given any relief. So taking into consideration the matter from any aspect, no interference in the matter is called for of this court. The petitioner has in fact taken the law in his own hands and he made all the attempt to frustrate the very purpose and object of the Act meant for protection of tribals. On technicalities, this court will not permit the petitioner to frustrate this beneficial piece of legislation enacted for the benefit of tribals.

9. In the result, this special civil application fails and the same is dismissed. Rule discharged.

Interim relief, if any, granted stands vacated. No  
order as to costs.

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